

Alan D. Kaplan, Esq.
Jorge Amieva, Esq.
HERRICK, FEINSTEIN LLP
2 Park Avenue
New York, New York 10016
Phone: (212) 592-1400
Email: akaplan@herrick.com; jamieva@herrick.com
Attorneys for Defendant Heather Hunter

DOCUMENT ELECTRONICALLY FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANNE MILLER,

Plaintiff,

V.

HOLTZBRINCK PUBLISHERS, LLC,
MACMILLAN PUBLISHERS, INC., SAINT
MARTIN'S PRESS, HEATHER HUNTER AND
MICHELLE VALENTINE,

Defendants.

Case No. 08-CV 03508 (HB)

**DECLARATION OF ALAN D.
KAPLAN, ESQ. IN SUPPORT OF
MOTION TO DISMISS**

ALAN D. KAPLAN hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner with the law firm of Herrick, Feinstein LLP, counsel for defendant Heather Hunter (“Hunter”) in connection with the above-captioned action and, as such, I am familiar with the facts stated herein.

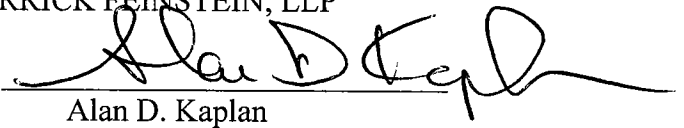
2. Attached hereto as Exhibit “A” is a true and accurate copy of the Complaint, originally filed by plaintiff in the United States District Court for the Northern District of Georgia, under Civil Action No. 07-CV-2644, but which is now pending in the United States District Court for the Southern District of New York.

3. Hunter moves to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 2, 2008

HERRICK FEINSTEIN, LLP

By: 
Alan D. Kaplan

Attorneys for Defendant Heather Hunter

2 Park Avenue

New York, NY 10016

Phone: (212) 592-1400

Email: akaplan@herrick.com

EXHIBIT A

ORIGINAL

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

OCT 24 2007

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, CLERK
By: *[Signature]* Deputy Clerk

DIANNE MILLER,

PLAINTIFF

v.

1 07-CV-2644
CIVIL ACTION NO. _____

JOE

HOLTZBRINCK PUBLISHERS, LLC,
MACMILLAN PUBLISHERS, INC
SAINT MARTIN'S PRESS,
HEATHER HUNTER
AND MICHELLE VALENTINE

DEFENDANTS

COMPLAINT

1. This is an action at law to redress damages caused to the Plaintiff through tortuous interference with business advantage, plagiarism and other actionable practices and conduct by Defendants.

PARTIES, JURISDICTION, AND VENUE

2. The Plaintiff, Dianne Miller, is an adult resident citizen of Washington, D.C., whose address is 2950 Van Ness St. NW # 527, Washington, D.C.

3. Defendant, Holtzbrinck Publishers, LLC, (hereafter "Holtzbrinck"), at all times relevant hereto, is a limited liability company created and organized under the laws of the state of New York and whose address is 175 9th Avenue, New York, NY 10010 and is subject to service of process by and through its General Counsel.

4. Defendant, MacMillan Publishers, Inc, (hereafter "MacMillan"), at all times relevant hereto, is a corporation created and organized under the laws of the state

of New York and whose address is 175 9th Avenue, New York, NY 10010 and is subject to service of process by and through its General Counsel.

5. Defendant, Saint Martins Press, (hereafter "St. Martins"), at all times relevant hereto, is a limited liability company created and organized under the laws of the state of New York and whose address is 175 9th Avenue, New York, NY 10010 and is subject to service of process by and through its General Counsel.

6. Defendant, Heather Hunter (hereafter "Hunter"), at all times relevant hereto, is an adult citizen of the State of New York who resides at an address unknown to Plaintiff at this time.

7. Defendant, Michelle Valentine (hereafter "Valentine"), at all times relevant hereto, is an adult citizen of the State of New York who resides at an address unknown to Plaintiff at this time.

8. The Court has subject-matter jurisdiction of this case under 28 U.S.C. § 1332 (a).

9. Venue is proper in this Court because the acts delineated below all occurred either partially or in totality in Atlanta, GA. Furthermore the book, subject matter of this litigation, sold by the defendant is distributed on a national level and is sold and circulated in Atlanta, Georgia.

FACTS

10. The Plaintiff, Diane Miller, is an author who agreed to write a book in conjunction, with Defendant, Heather Hunter, for publication.

11. Sometime in April of 2005, Plaintiff Miller delivered a finished manuscript to Defendant Hunter and her agent.

12. On or about July 24, 2007, Defendants Holtzbrinck, MacMillan, and Saint Martin's released a book purportedly written by Defendant Hunter and Defendant Valentine.

13. The book released by Hunter and Valentine is the substantially the same work and product that Plaintiff wrote for Hunter.

14. Defendant Hunter intentionally misled Plaintiff into believing that she would be paid and acknowledged as the principal writer of the book in question.

15. The Defendant Valentine, intentionally took the manuscript written by Plaintiff, and held it out as her own work and has failed to acknowledge that the work is that of the Plaintiff or pay Plaintiff for same.

16. Defendant Holtzbrinck, MacMillan, and Saint Martins knew that the book purportedly written by Defendant Hunter and Valentine was not an original work and published the book without regard for the rights of the Plaintiff.

COUNT I

Intentional and Tortious Interference with Business Relationship

17. The allegations contained in paragraphs 1 through 16 above are incorporated herein as if set forth again in full.

18. The Defendants' acts delineated hereinabove were willful and intentional.

19. The Defendants' acts delineated hereinabove were done with the unlawful purpose of causing damage and loss to the Plaintiff's business.

20. The Defendants' acts delineated hereinabove were calculated to cause loss and damage to Plaintiff in its lawful business or undertakings.

21. Defendants' conduct constitutes tortious interference and caused damage to Plaintiff Dianne Miller's business relations with those inside of the literary community by failing to give Plaintiff notoriety for the manuscript written.

COUNT II

Intentional Conversion of Plaintiff's Manuscript

22. The allegations contained in paragraphs 1 through 21 above are incorporated herein as if set forth again in full.

23. The intentional acts complained constitute unlawful conversion of an unpublished manuscript by Defendants Holtzbrinck, Macmillan, St. Martin's, and Valentine.

24. The Defendants conduct delineated above has caused Plaintiff to suffer a loss of personal property that was in her rightful possession at the time of the alleged incident.

COUNT III

Fraudulent Inducement and Misrepresentation

25. The allegations contained in paragraphs 1 through 24 above are incorporated herein as if set forth again in full.

26. The intentional acts complained of constitute both fraudulent inducement and intentional misrepresentation on the part of Defendant Hunter in inducing Plaintiff to write the manuscript with her Defendant Hunter in full knowledge that she never intended Plaintiff to receive her due credit.

27. The Defendant through her conduct delineated above caused Plaintiff to suffer from a loss of income.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

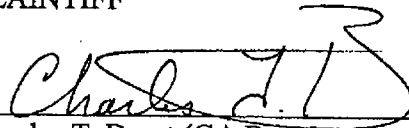
- (a) Trial by jury;
- (b) Judgment for Plaintiff and against the Defendants;
- (c) An award of damages in the amount of one million dollars (\$1,000,000) which will fully and fairly compensate Plaintiff for lost revenues and compensatory damages caused by Defendants' actions;
- (d) Reasonable attorney's fees, costs and expenses;
- (e) Punitive damages of two million dollars (\$2,000,000) to deter like conduct in the future by these Defendants and other similarly situated persons and entities;
- (f) Such other and further relief as may be deemed just and proper in the premises.

JURY TRIAL DEMAND

Plaintiff demands a trial by struck jury of all issues in this cause.

Respectfully submitted, this the ____ day of _____, 2007.

DIANNE MILLER.
PLAINTIFF

A handwritten signature in cursive script, appearing to read "Charles T. Brant", written over a horizontal line.

Charles T. Brant (GA Bar No
Colom and Brant Law Firm
170 Mitchell Street SW
Atlanta, GA 30303
Attorney for Plaintiff

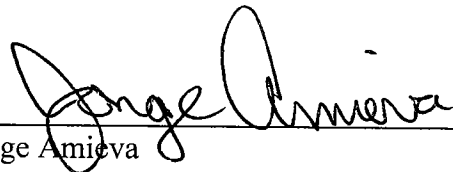
**PLAINTIFF REQUEST SERVICE OF PROCESS ON DEFENDANTS BY
CERTIFIED RETURN RECIEPT REQUESTED.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically with the United States District Court for the Southern District of New York on this 2nd day of June, 2008, with notice of case activity generated and sent via regular mail to:

Charles T. Brant, Esq.
Colom and Brant Law Firm
170 Mitchell Street SW
Atlanta, Georgia 30303
Attorneys for Plaintiff

Robert D. Balin, Esq.
Davis Wright Tremaine LLP
1633 Broadway
New York, New York 10019
*Attorneys for Holtzbrinck Publishers, LLC,
MacMillan Publishers, Inc., St. Martin's
Press and Michelle Valentine*



Jorge Amieva